

Gifts to an Agency

FPPC Form 801—Regulation 18944.2

Questions and Answers

The Fair Political Practices Commission has substantially revised Regulation 18944.2, which establishes the criteria under which a payment that would otherwise be considered a gift to a public official may be considered a gift to the official's agency instead. A copy of the regulation is available on the FPPC website (www.fppc.ca.gov). The regulation also requires agencies to report these gifts on FPPC Form 801. The following questions and answers may assist you in complying with the regulation:

1. Q. The mayor has been invited to visit the city's sister city in Mexico. Travel and accommodations would be provided by the sister city. May the mayor's city accept the invitation as a gift to the city?

A. No. Agencies may not accept gifts of travel for elected officials and those state and local officials serving in a position listed in Gov. Code Section 87200.¹ The mayor's city may pay for the trip, or the mayor may accept the travel payments from the sister city and disclose them on his or her Statement of Economic Interests (Form 700) as gifts. Gov. Code Section 89506 describes various travel payments from government, educational, or nonprofit groups that are not subject to limits (although in most circumstances they must be reported as gifts).

2. Q. A state employee has been designated by her agency to attend a conference paid by a third party. The cost of the lodging will exceed the standard state reimbursement rate. Will the employee receive a gift if she uses the accommodations?

A. If the agency follows established procedures allowing a higher rate for lodging (as if the agency were paying for the lodging), no gift to the official will result. If the procedures are not followed, the employee will receive a reportable gift in the amount that exceeds the standard state reimbursement rate. For example, if the state rate for lodging is \$84 and the actual value received is \$158, the employee will receive a gift of \$74, which may be reportable on the employee's Form 700 and subject to limits.

3. Q. Is there a required form for ensuring that pre-approval was obtained in advance of a trip?

A. No. The agency may use its existing forms and documentation. Agencies may contact the FPPC for guidance.

¹ Officials listed in Gov. Code Section 87200 include elected state officers, judges and commissioners of courts, Public Utilities Commission members, Energy Commission members, Fair Political Practices Commission members, Coastal Commission members, planning commissioners, members of boards of supervisors, district attorneys, county counsels, county treasurers, chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers of cities, members of city councils, and other public officials who manage public investments.

4. Q. Is there a regulation or statute that defines “official agency business”?
- A. No. The requirement that a gift to an agency be used for “official agency business” is fairly self explanatory. The payment must be used for a legitimate governmental purpose and must assist the agency in carrying out its mission, programs or goals. The payment may not be for an activity unrelated to the official responsibilities of the agency.
5. Q. May a donor who wishes to make a gift to an agency stipulate that the gift is to be used by a particular official?
- A. No. The donor may identify a purpose for the payment, but may not designate by name, title, class, or otherwise, an official who may use the payment.
6. Q. If the donor of an agency gift makes payments directly to the vendors instead of to the agency (e.g., the donor reserves a hotel room or air fare on its own credit card), must the agency obtain the specific amounts paid for lodging, transportation, and meals?
- A. Yes. The agency must provide a breakdown of the expenses for transportation, lodging, meals and other related expenses on the Form 801.
7. Q. At a meeting between several agency officials and business leaders, coffee and pastries are provided by one of the business representatives. Must the agency complete the Form 801?
- A. No. Generally, the receipt of food and beverages is considered a gift to the official who consumes them. If the value of the food and beverages is \$50 or more, the official may be required to report the gift on his or her Form 700. If an agency believes the provision of food or beverages should be considered a gift to the agency and not to an official (for example food provided at a public event sponsored by the agency), the agency should contact the FPPC for advice.
8. Q. If a local agency does not have a website, when must it send the completed Form 801 to the FPPC?
- A. Within 30 days of the use of the payment.